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IN THE

Supreme Court of the United States

October Term, 1966

No. 837

MAYFLOWER CONGREGATIONAL CHURCH,
a Michigan corporation,
Petitioner,

against

HELEN JOAN BERKAW, GRACE PFAFF, FRANK C. SMITH and ROY L. STEPHENS, Jr.,
Respondents.

PETITIONER'S REPLY BRIEF

LOREN T. WOOD,
Counsel for Petitioner,
No. 60 Wall Street,
New York, N. Y. 10005.

DAVID W. PECK of New York,
JOHN T. REDMOND of New York,
H. GORDON WOOD of Detroit,
LAURENCE D. CONNOR of Detroit,
EDWARD W. KEANE of New York,
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I.

The judgment and opinion of the New York Court of Appeals are alone controlling as to what that Court adjudicated in the *Cadman* case.

Respondents have abandoned the entire theory upon which the Michigan Supreme Court denied full faith and credit to the judgment of the New York Court of Appeals in the *Cadman* case and, instead, have contrived a technical argument, using selected portions of the order and judgment of the intermediate appellate court in New York in an effort to demonstrate that the New York Court of Appeals did not decide the departure issue.

This argument is in substance a contention that in affirming the judgment of the Appellate Division, the New York Court of Appeals thereby adopted as its own reasons given by the Appellate Division for its judgment. Only by ignoring the clear import of the Court of Appeals opinion as well as the operative portions of the judgments of both the Appellate Division and the Court of Appeals could respondents have arrived at this conclusion and the absurdity of stating (Resp. Br. p. 7) that the New York trial court's "judgment against the merger continues in full force"—despite the dismissal of the *Cadman* complaint "on the merits" (59a).

The operative portions of the judgments of the three New York courts in the *Cadman* case unequivocally express the disposition made in each such court. The trial court in its judgment, after noting that both sides had waived formal findings of fact and conclusions of law, went on to grant the broad relief sought by the plaintiffs. The judgment of the Appellate Division, entered on June 3, 1952, after noting its reversal of the trial court on the law and the facts, stated (Mich. Apx. 242a):

> "Adjudged that the judgment so appealed from, be and the same is hereby reversed on the law and the facts, and plaintiffs' complaint and defendant's counterclaim dismissed; and it is
>
> "Further Adjudged that the plaintiffs' complaint be and the same hereby is dismissed; and it is
>
> "Further Adjudged that the counterclaim be and the same hereby is dismissed."

The New York Court of Appeals held that "the complaint was properly dismissed on the merits" (59a) and the judgment dated January 25, 1954 entered on that court's remittitur stated (Mich. Apx. 244a):

> "Adjudged that the judgment entered herein on the 3rd day of June, 1952 be and the same hereby is affirmed."

The judgment of the New York Court of Appeals, standing apart from the opinion, affords little insight to the

grounds and reasons upon which it is based. In such cases, it is permissible and desirable to examine the opinion in order to determine the issues actually presented and passed upon by the court awarding the judgment. *Irwin* v. *Dowd*, 359 U. S. 394 (1959); *Great Lakes Dredge & Dock Co. et al.* v. *Huffman*, 319 U. S. 266 (1943); *Radford* v. *Myers*, 231 U. S. 725 (1913). This was precisely the procedure followed by the Federal courts in the *Burlington* case and by the Michigan courts in this case. It is noteworthy that the Michigan Supreme Court did not base its decision on the argument which is now offered to this Court by the respondents.

The New York Court of Appeals, in its opinion, stated the grounds upon which it affirmed the judgment below. That court was not bound to, nor did it, adopt the grounds stated by the Appellate Division in its opinion and order. Moreover, it was not necessary for the New York Court of Appeals, in affirming the judgment of the Appellate Division dismissing the complaint, to affirm, reverse, modify or otherwise comment upon the Appellate Division's statement in its order, which also appeared in its opinion, that it did not consider matters of doctrine, polity and ecclesiastical matters. Under the New York law, which must be looked to in any construction of the New York judgment, it is well established that an affirmance without opinion by an Appellate Court does not imply approval of the reasoning or grounds upon which the judgment below has been based, but merely approves of the result reached. *Commissioner Public Works* v. *Johnson*, 265 N. Y. 440 (1934); *Adrico Realty Corp.* v. *City of New York*, 250 N. Y. 29 (1928); *Miller* v. *Homeowners Loan Corp.*, 263 App. Div. 607 (2d Dept. 1952); *People ex rel. Kniffen* v. *Knight*, 184 Misc. 545 (1945).

Therefore since the Court of Appeals in the *Cadman* case set forth in detail its reasons for affirming the Appellate Division's judgment dismissing the complaint and since

it did so in a lengthy opinion in which all of the issues, including alleged departures from Congregationalism, were examined and determined. Its decision alone controls as to the grounds upon which the judgment was rendered and the adjudications made.

The New York Appellate Division's observations as to the findings which it did not make were placed in its order for the purpose of compliance with Section 602 of the New York Civil Practice Act (the Act in effect at the time of the *Cadman* case), the purpose of which was to apprise the New York Court of Appeals of the extent to which the Appellate Division dealt with the issues of law and fact presented to it. Obviously, such recitals could not become part of the adjudications made by the Court of Appeals unless expressly adopted by it.

Moreover, as noted in the Petition (footnote p. 18), the *Cadman* trial court expressly stated that it "did not deal with any ecclesiastical matters". Thus, the Appellate Division's general statement that it did not consider such matters could have had no reference to any specific findings by the trial court and thus cannot now be read to constitute an acceptance by the New York Court of Appeals of any such findings. As we have pointed out Petition, p. 18) there was complete agreement between the parties in *Cadman* as to the doctrine and polity of Congregationalism. The sole task of the New York courts was to determine, *as a matter of law,* whether the Basis of Union departed from that undisputed standard.*

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* We have drawn this Court's attention to the fact that the Constitution of the United Church, which is in dispute in this case, was to be "based on the principles set forth in the Basis of Union" and was held by the *Burlington* court to be in conformity with the Basis of Union. (Petition, pp. 6 and 9.)

II.

The United States Court of Appeals recognized the *Cadman* issues as legal issues.

Respondents' argument (Br., p. 9) and their quotation from the *Burlington* opinion relate to the adequacy of the *Cadman* plaintiffs' representation of the class of which respondents are members, a matter not stated by the Michigan Court as a ground for its denial of credit to the New York decision and thus a matter not before this Court. The Michigan Court assumed for the purposes of its decision that the respondents "are within a class represented by the *Cadman* and *Burlington* plaintiffs" (43a).

However, it is relevant that the United States Court of Appeals held that the validity of the General Council's action *and its effect on individual congregations* were legal issues (98a). It also held that the *Burlington* and *Cadman* plaintiffs formed one class and that no legal issue not determined by *Cadman* was raised in the *Burlington* complaint and the latter must be dismissed (97a). That is precisely the situation in this case with respect to the departure issue.

III.

The United Church Constitution does not limit the autonomy of the local church.

While there is no justification for respondents' extensive argument of the merits of the case on pages 10 through 13 of their brief and no requirement that petitioner reply to this argument, petitioner's silence should not be construed as an agreement that amendments to the Constitution of the United Church can affect the autonomy of the local church or require it to withdraw from the United Church in order to avoid accepting the amendment. Para-

graph 3 of the Constitution provides that the Constitution regulates only the General Synod and not the churches. Paragraph 21 acknowledges that the autonomy of the local church is inherent and that the Constitution gives no organization any power to abridge that autonomy (Mich. Apx. 136a, 139a).

CONCLUSION

It is submitted that the petition herein should be granted.

Respectfully submitted,

LOREN T. WOOD,
Counsel for Petitioner,
No. 60 Wall Street,
New York, New York.

DAVID W. PECK of New York
JOHN T. REDMOND of New York
H. GORDON WOOD of Detroit
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